

111TH CONGRESS
1ST SESSION

H. R. 4347

To amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2009

Mr. BOREN (for himself and Mr. WALZ) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Department of the Interior Tribal Self-Governance Act
6 of 2009”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—INDIAN SELF-DETERMINATION

- Sec. 101. Definitions; reporting and audit requirements; application of provisions.
- Sec. 102. Contracts by Secretary of Interior.
- Sec. 103. Administrative provisions.
- Sec. 104. Contract funding and indirect costs.
- Sec. 105. Contract or grant specifications.

TITLE II—TRIBAL SELF-GOVERNANCE

- Sec. 201. Tribal self-governance.

TITLE I—INDIAN SELF- DETERMINATION

SEC. 101. DEFINITIONS; REPORTING AND AUDIT REQUIREMENTS; APPLICATION OF PROVISIONS.

(a) DEFINITIONS.—Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) is amended by striking subsection (j) and inserting the following:

“(j) ‘self-determination contract’ means a contract entered into (or a grant or cooperative agreement used under section 9) under title I between a tribal organization and the appropriate Secretary for the planning, conduct, and administration of programs or services that are otherwise provided to Indian tribes and members of Indian tribes pursuant to Federal law, subject to the condition that, except as provided in section 105(a)(3), no contract entered into (or grant or cooperative agreement used under section 9) under title I shall be—

“(1) considered to be a procurement contract;

or

1 “(2) subject to any Federal procurement law
2 (including regulations);”.

3 (b) REPORTING AND AUDIT REQUIREMENTS.—Sec-
4 tion 5(b) of the Indian Self-Determination and Education
5 Assistance Act (25 U.S.C. 450c(b)) is amended by striking
6 “after completion of the project or undertaking referred
7 to in the preceding subsection of this section” and insert-
8 ing “after the date on which a report is submitted to the
9 Secretary under subsection (a)”.

10 (c) APPLICATION OF OTHER PROVISIONS.—Sections
11 4, 5, 6, 7, 102(c), 104, 105(a)(1), 105(f), 110 and 111
12 of the Indian Self-Determination and Education Assist-
13 ance Act, as amended (25 U.S.C. 450 et seq.) (Public Law
14 93–638, as amended, 88 Stat. 2203) and section 314 of
15 the Department of the Interior and Related Agencies Ap-
16 propriations Act, 1991 (Public Law 101–512; 104 Stat.
17 1959), apply to compacts and funding agreements entered
18 into under title IV.

19 **SEC. 102. CONTRACTS BY SECRETARY OF INTERIOR.**

20 Section 102 of the Indian Self-Determination and
21 Education Assistance Act (25 U.S.C. 450f) is amended—

22 (1) in subsection (c)(2), by striking “economic
23 enterprises” and all that follows through “except
24 that” and inserting “economic enterprises (as de-

1 fined in section 3 of the Indian Financing Act of
2 1974 (25 U.S.C. 1452)), except that”;

3 (2) by striking subsection (e) and inserting the
4 following:

5 “(e) APPEALS.—In any appeal (including civil ac-
6 tions) involving decisions made by the Secretary under this
7 title, the Secretary shall have the burden of proof of dem-
8 onstrating, by clear and convincing evidence—

9 “(1) the validity of the grounds for the decision
10 made; and

11 “(2) that the decision is fully consistent with
12 the provisions and policies of this title.”; and

13 (3) by adding at the end the following:

14 “(f) GOOD FAITH REQUIREMENT.—In the negotia-
15 tion of compacts and funding agreements, the Secretary
16 shall at all times negotiate in good faith to maximize im-
17 plementation of the self-governance policy. The Secretary
18 shall carry out this title in a manner that maximizes the
19 policy of tribal self-governance, in a manner consistent
20 with the purposes specified in section 3 of the Tribal Self-
21 Governance Amendments of 2000 (Public Law 106–260;
22 25 U.S.C. 458aaa note).”.

23 **SEC. 103. ADMINISTRATIVE PROVISIONS.**

24 Section 105 of the Indian Self-Determination and
25 Education Assistance Act (25 U.S.C. 450j) is amended—

1 (1) in subsection (b) in the first sentence, by
2 striking “pursuant to” and all that follows through
3 “of this Act” and inserting “pursuant to sections
4 102 and 103”;

5 (2) by striking subsection (j) and inserting the
6 following:

7 “(j) REDESIGN AND CONSOLIDATION.—An Indian
8 tribe may redesign or consolidate programs, services, func-
9 tions, and activities (or portions thereof) included in a
10 funding agreement under this title and reallocate or redi-
11 rect funds for such programs, services, functions, and ac-
12 tivities (or portions thereof) that are eligible to be included
13 in Consolidated Tribal Government Programs in any man-
14 ner that the Indian tribe determines to be in the best in-
15 terest of the health and welfare of the Indian community
16 being served, only if the redesign or consolidation does not
17 have the effect of denying eligibility for services to popu-
18 lation groups otherwise eligible to be served under applica-
19 ble Federal law;” and

20 (3) by adding at the end the following:

21 “(p) INTERPRETATION BY SECRETARY.—Except as
22 otherwise provided by law, the Secretary shall interpret
23 all Federal laws (including regulations) and Executive or-
24 ders in a manner that facilitates, to the maximum extent
25 practicable—

1 “(1) the inclusion in self-determination con-
2 tracts and funding agreements of—

3 “(A) applicable programs, services, func-
4 tions, and activities (or portions thereof); and

5 “(B) funds associated with those pro-
6 grams, services, functions, and activities;

7 “(2) the implementation of self-determination
8 contracts and funding agreements; and

9 “(3) the achievement of tribal health objec-
10 tives.”.

11 **SEC. 104. CONTRACT FUNDING AND INDIRECT COSTS.**

12 Section 106(a)(3)(A) of the Indian Self-Determina-
13 tion and Education Assistance Act (25 U.S.C. 450j–
14 1(a)(3)(A)) is amended—

15 (1) in clause (i), by striking “, and” at the end
16 and inserting a semicolon;

17 (2) in clause (ii), by striking the comma at the
18 end and inserting “; and”; and

19 (3) by inserting after clause (ii) the following:

20 “(iii) not less than 50 percent of the
21 expenses incurred by the governing body of
22 a tribe or tribal organization relating to a
23 Federal program, function, service, or ac-
24 tivity pursuant to the contract (which ex-
25 penses shall be considered to be reasonable

1 and allowable without documentation for
2 the purpose of this paragraph), except that
3 in the case of a tribe or tribal organization
4 which derives all or substantially all of its
5 program revenue from other governments
6 or organizations, not less than 100 percent
7 of such expenses shall be considered to be
8 reasonable and allowable without docu-
9 mentation.”.

10 **SEC. 105. CONTRACT OR GRANT SPECIFICATIONS.**

11 Section 108 of the Indian Self-Determination and
12 Education Assistance Act (25 U.S.C. 450l) is amended—

13 (1) in subsection (a)(2), by inserting “subject
14 to subsections (a) and (b) of section 102,” before
15 “contain”; and

16 (2) in subsection (f)(2)(A)(ii) of the model
17 agreement contained in subsection (c), by inserting
18 “subject to subsections (a) and (b) of section 102 of
19 the Indian Self-Determination and Education Assist-
20 ance Act (25 U.S.C. 450f),” before “such other pro-
21 visions”.

1 **TITLE II—TRIBAL SELF-**
2 **GOVERNANCE**

3 **SEC. 201. TRIBAL SELF-GOVERNANCE.**

4 Title IV of the Indian Self-Determination and Edu-
5 cation Assistance Act (25 U.S.C. 450 et seq.) is amended
6 to read as follows:

7 **“TITLE IV—TRIBAL SELF-**
8 **GOVERNANCE**

9 **“SEC. 401. DEFINITIONS.**

10 “In this title:

11 “(1) COMPACT.—The term ‘compact’ means a
12 self-governance compact entered into under section
13 404.

14 “(2) CONSTRUCTION PROGRAM.—The term
15 ‘construction program’ or ‘construction project’
16 means a tribal undertaking relating to the adminis-
17 tration, planning, environmental determination, de-
18 sign, construction, repair, improvement, or expan-
19 sion of roads, bridges, buildings, structures, systems,
20 or other facilities for purposes of housing, law en-
21 forcement, detention, sanitation, water supply, edu-
22 cation, administration, community, health, irriga-
23 tion, agriculture, conservation, flood control, trans-
24 portation, or port facilities, or for other tribal pur-
25 poses.

1 “(3) DEPARTMENT.—The term ‘Department’
2 means the Department of the Interior.

3 “(4) FUNDING AGREEMENT.—The term ‘fund-
4 ing agreement’ means a funding agreement entered
5 into under section 405.

6 “(5) GROSS MISMANAGEMENT.—The term
7 ‘gross mismanagement’ means a significant viola-
8 tion, shown by clear and convincing evidence, of a
9 compact, funding agreement, or statutory or regu-
10 latory requirement applicable to Federal funds—

11 “(A) for a program administered by an In-
12 dian tribe; or

13 “(B) under a compact or funding agree-
14 ment that results in a significant reduction of
15 funds available for the programs assumed by an
16 Indian tribe.

17 “(6) PROGRAM.—The term ‘program’ means
18 any program, function, service, or activity (or por-
19 tion thereof) within the Department of the Interior
20 that is included in a funding agreement.

21 “(7) INHERENT FEDERAL FUNCTION.—The
22 term ‘inherent Federal function’ means a Federal
23 function that cannot legally be delegated to an In-
24 dian tribe.

1 “(8) SECRETARY.—The term ‘Secretary’ means
2 the Secretary of the Interior.

3 “(9) SELF-GOVERNANCE.—The term ‘self-gov-
4 ernance’ means the program of self-governance es-
5 tablished under section 402.

6 “(10) TRIBAL SHARE.—The term ‘tribal share’
7 means an Indian tribe’s portion of all funds and re-
8 sources that support secretarial programs that are
9 not required by the Secretary for the performance of
10 inherent Federal functions.

11 **“SEC. 402. ESTABLISHMENT.**

12 “The Secretary shall carry out a program within the
13 Department to be known as the ‘Tribal Self-Governance
14 Program’.

15 **“SEC. 403. SELECTION OF PARTICIPATING INDIAN TRIBES.**

16 “(a) IN GENERAL.—

17 “(1) PARTICIPANTS.—

18 “(A) The Secretary, acting through the Di-
19 rector of the Office of Self-Governance, may se-
20 lect up to 50 new Indian tribes per year from
21 those eligible under subsection (b) to participate
22 in self-governance.

23 “(B) If each Indian tribe requests, two or
24 more otherwise eligible Indian tribes may be

1 treated as a single Indian tribe for the purpose
2 of participating in self-governance.

3 “(2) OTHER AUTHORIZED INDIAN TRIBE OR
4 TRIBAL ORGANIZATION.—If an Indian tribe author-
5 izes another Indian tribe or a tribal organization to
6 plan for or carry out a program on its behalf under
7 this title, the authorized Indian tribe or tribal orga-
8 nization shall have the rights and responsibilities of
9 the authorizing Indian tribe (except as otherwise
10 provided in the authorizing resolution).

11 “(3) JOINT PARTICIPATION.—Two or more In-
12 dian tribes that are not otherwise eligible under sub-
13 section (b) may be treated as a single Indian tribe
14 for the purpose of participating in self-governance as
15 a tribal organization if—

16 “(A) each Indian tribe so requests; and

17 “(B) the tribal organization itself or at
18 least one of the Indian tribes participating in
19 the tribal organization is eligible under sub-
20 section (b).

21 “(4) TRIBAL WITHDRAWAL FROM A TRIBAL OR-
22 GANIZATION.—

23 “(A) IN GENERAL.—An Indian tribe that
24 withdraws from participation in a tribal organi-
25 zation, in whole or in part, shall be entitled to

1 participate in self-governance if the Indian tribe
2 is eligible under subsection (b).

3 “(B) EFFECT OF WITHDRAWAL.—If an In-
4 dian tribe withdraws from participation in a
5 tribal organization, the Indian tribe shall be en-
6 titled to its tribal share of funds and resources
7 supporting the programs that the Indian tribe
8 is entitled to carry out under the compact and
9 funding agreement of the Indian tribe.

10 “(C) PARTICIPATION IN SELF-GOVERN-
11 ANCE.—The withdrawal of an Indian tribe from
12 a tribal organization shall not affect the eligi-
13 bility of the tribal organization to participate in
14 self-governance on behalf of one or more other
15 Indian tribes provided that the tribal organiza-
16 tion still qualifies under subsection (b).

17 “(D) WITHDRAWAL PROCESS.—

18 “(i) IN GENERAL.—An Indian tribe
19 may, by tribal resolution, fully or partially
20 withdraw its tribal share of any program
21 in a funding agreement from a partici-
22 pating tribal organization. The Indian
23 tribe shall provide a copy of the tribal reso-
24 lution to the Secretary.

25 “(ii) EFFECTIVE DATE.—

1 “(I) IN GENERAL.—A withdrawal
2 under clause (i) shall become effective
3 on the date specified in the tribal res-
4 olution and that is mutually agreed
5 upon by the Secretary, the with-
6 drawing Indian tribe, and the tribal
7 organization that signed the compact
8 and funding agreement on behalf of
9 the withdrawing Indian tribe or tribal
10 organization.

11 “(II) NO SPECIFIED DATE.—In
12 the absence of a date specified in the
13 resolution, the withdrawal shall be-
14 come effective on—

15 “(aa) the earlier of—

16 “(AA) 1 year after the
17 date of submission of the re-
18 quest; or

19 “(BB) the date on
20 which the funding agree-
21 ment expires; or

22 “(bb) such date as may be
23 mutually agreed upon by the Sec-
24 retary, the withdrawing Indian
25 tribe, and the tribal organization

1 that signed the compact and
2 funding agreement on behalf of
3 the withdrawing Indian tribe or
4 tribal organization.

5 “(E) DISTRIBUTION OF FUNDS.—If an In-
6 dian tribe or tribal organization eligible to enter
7 into a self-determination contract under title I
8 or a compact or funding agreement under this
9 title fully or partially withdraws from a partici-
10 pating tribal organization, the withdrawing In-
11 dian tribe—

12 “(i) may elect to enter a self-deter-
13 mination contract or compact, in which
14 case—

15 “(I) the withdrawing Indian tribe
16 or tribal organization shall be entitled
17 to its tribal share of unexpended
18 funds and resources supporting the
19 programs that the Indian tribe will be
20 carrying out under its own self-deter-
21 mination contract or compact and
22 funding agreement (calculated on the
23 same basis as the funds were initially
24 allocated to the funding agreement of
25 the tribal organization); and

1 “(II) the funds referred to in
2 subclause (I) shall be withdrawn by
3 the Secretary from the funding agree-
4 ment of the tribal organization and
5 transferred to the withdrawing Indian
6 tribe, on the condition that the provi-
7 sions of sections 102 and 105(i), as
8 appropriate, shall apply to the with-
9 drawing Indian tribe; or

10 “(ii) may elect not to enter a self-de-
11 termination contract or compact, in which
12 case all funds not obligated by the tribal
13 organization associated with the with-
14 drawing Indian tribe’s returned programs,
15 less close-out costs, shall be returned by
16 the tribal organization to the Secretary for
17 operation of the programs included in the
18 withdrawal.

19 “(F) RETURN TO MATURE CONTRACT STA-
20 TUS.—If an Indian tribe elects to operate all or
21 some programs carried out under a compact or
22 funding agreement under this title through a
23 self-determination contract under title I, at the
24 option of the Indian tribe, the resulting self-de-
25 termination contract shall be a mature self-de-

1 termination contract as long as the tribe meets
2 the requirements set forth in section 4(h) of
3 this Act.

4 “(b) ELIGIBILITY.—To be eligible to participate in
5 self-governance, an Indian tribe shall—

6 “(1) successfully complete the planning phase
7 described in subsection (c);

8 “(2) request participation in self-governance by
9 resolution or other official action by the tribal gov-
10 erning body; and

11 “(3) demonstrate, for the 3 fiscal years pre-
12 ceding the date on which the Indian tribe requests
13 participation, financial stability and financial man-
14 agement capability as evidenced by the Indian tribe
15 having no uncorrected significant and material audit
16 exceptions in the required annual audit of its self-
17 determination or self-governance agreements with
18 any Federal agency.

19 “(c) PLANNING PHASE.—

20 “(1) IN GENERAL.—An Indian tribe seeking to
21 begin participation in self-governance shall complete
22 a planning phase in accordance with this subsection.

23 “(2) ACTIVITIES.—The planning phase—

24 “(A) shall be conducted to the satisfaction
25 of the Indian tribe; and

1 “(B) shall include—

2 “(i) legal and budgetary research; and

3 “(ii) internal tribal government plan-
4 ning and organizational preparation.

5 “(d) GRANTS.—

6 “(1) IN GENERAL.—Subject to the availability
7 of appropriations, an Indian tribe or tribal organiza-
8 tion that meets the requirements of paragraphs (2)
9 and (3) of subsection (b) shall be eligible for
10 grants—

11 “(A) to plan for participation in self-gov-
12 ernance; and

13 “(B) to negotiate the terms of participa-
14 tion by the Indian tribe or tribal organization
15 in self-governance, as set forth in a compact
16 and a funding agreement.

17 “(2) RECEIPT OF GRANT NOT REQUIRED.—Re-
18 ceipt of a grant under paragraph (1) shall not be a
19 requirement of participation in self-governance.

20 **“SEC. 404. COMPACTS.**

21 “(a) IN GENERAL.—The Secretary shall negotiate
22 and enter into a written compact with each Indian tribe
23 participating in self-governance in a manner consistent
24 with the trust responsibility of the Federal Government,

1 treaty obligations, and the government-to-government re-
2 lationship between Indian tribes and the United States.

3 “(b) CONTENTS.—A compact under subsection (a)
4 shall—

5 “(1) specify and affirm the general terms of the
6 government-to-government relationship between the
7 Indian tribe and the Secretary; and

8 “(2) include such terms as the parties intend
9 shall control during the term of the compact.

10 “(c) AMENDMENT.—A compact under subsection (a)
11 may be amended only by agreement of the parties.

12 “(d) EFFECTIVE DATE.—The effective date of a com-
13 pact under subsection (a) shall be—

14 “(1) the date of the execution of the compact
15 by the parties; or

16 “(2) another date agreed upon by the parties.

17 “(e) DURATION.—A compact under subsection (a)
18 shall remain in effect for so long as permitted by Federal
19 law or until termination by written agreement, retroces-
20 sion, or reassumption.

21 “(f) EXISTING COMPACTS.—An Indian tribe partici-
22 pating in self-governance under this title, as in effect on
23 the date of the enactment of the Department of the Inte-
24 rior Tribal Self-Governance Act of 2009, shall have the
25 option at any time after that date—

1 “(1) to retain its negotiated compact (in whole
2 or in part) to the extent that the provisions of the
3 compact are not directly contrary to any express
4 provision of this title; or

5 “(2) to negotiate a new compact in a manner
6 consistent with this title.

7 **“SEC. 405. FUNDING AGREEMENTS.**

8 “(a) IN GENERAL.—The Secretary shall negotiate
9 and enter into a written funding agreement with the gov-
10 erning body of an Indian tribe or tribal organization in
11 a manner consistent with the trust responsibility of the
12 Federal Government, treaty obligations, and the govern-
13 ment-to-government relationship between Indian tribes
14 and the United States.

15 “(b) INCLUDED PROGRAMS.—

16 “(1) BUREAU OF INDIAN AFFAIRS AND OFFICE
17 OF SPECIAL TRUSTEE.—

18 “(A) IN GENERAL.—A funding agreement
19 shall, as determined by the Indian tribe, au-
20 thorize the Indian tribe to plan, conduct, con-
21 solidate, administer, and receive full tribal
22 share funding for all programs carried out by
23 the Bureau of Indian Affairs and Office of Spe-
24 cial Trustee, without regard to the agency or
25 office within which the program is performed

(including funding for agency, area, and central office functions in accordance with subsection 409(c)), that—

“(i) are provided for in the Act of April 16, 1934 (25 U.S.C. 452 et seq.);

“(ii) the Secretary administers for the benefit of Indians under the Act of November 2, 1921 (25 U.S.C. 13), or any subsequent Act;

“(iii) the Secretary administers for the benefit of Indians with appropriations made to agencies other than the Department of the Interior; or

“(iv) are provided for the benefit of Indians because of their status as Indians.

“(B) INCLUSIONS.—Programs described in subparagraph (A) shall include all programs with respect to which Indian tribes or Indians are primary or significant beneficiaries.

“(2) DEMONSTRATION PROJECT.—The following programs, functions, services, and activities (or portions thereof) carried out by the Secretary or delegates of the Secretary shall be included in a contract or compact under either title I or title IV of this Act at the Indian tribe’s option, on a dem-

1 onstration basis for fiscal years 2011 through 2014,
2 and only with respect to the particular Indian tribe
3 identified in each subparagraph below:

4 “(A) HOOPA VALLEY TRIBE.—Programs,
5 services, functions, and activities (or portions
6 thereof) carried out under Public Law 102–575
7 for the purpose of restoring the Trinity River
8 fishery.

9 “(B) QUINULT INDIAN NATION.—Pro-
10 grams, services, functions, and activities (or
11 portions thereof) related to development, oper-
12 ation, and maintenance of the National Salmon
13 Hatchery located on the Quinault Reservation.

14 “(C) LUMMI NATION.—Notwithstanding
15 any other provision of this title, programs, serv-
16 ices, functions, and activities (or portions there-
17 of) under the education provisions of Public
18 Laws 95–561, 98–511, 99–99, and 100–297,
19 and part 32 of title 25, Code of Federal Regu-
20 lations, excluding the formula developed pursu-
21 ant to section 1128 of the Education Amend-
22 ments of 1978 (25 U.S.C. 2008).

23 “(3) DISCRETIONARY PROGRAMS.—A funding
24 agreement under subsection (a) may, in accordance
25 with such additional terms as the parties consider to

1 be appropriate, include programs, services, func-
2 tions, and activities (or portions thereof), adminis-
3 tered by the Secretary, in addition to programs de-
4 scribed in paragraphs (1) and (2), that are of special
5 geographic, historical, or cultural significance to the
6 Indian tribe.

7 “(4) COMPETITIVE BIDDING.—Nothing in this
8 section—

9 “(A) supersedes any express statutory re-
10 quirement for competitive bidding; or

11 “(B) prohibits the inclusion in a funding
12 agreement of a program in which non-Indians
13 have an incidental or legally identifiable inter-
14 est.

15 “(5) EXCLUDED FUNDING.—A funding agree-
16 ment shall not authorize an Indian tribe to plan,
17 conduct, administer, or receive tribal share funding
18 under any program that—

19 “(A) is provided under the Tribally Con-
20 trolled College or University Assistance Act of
21 1978 (25 U.S.C. 1801 et seq.); and

22 “(B) is provided for elementary and sec-
23 ondary schools under the formula developed
24 under section 1127 of the Education Amend-
25 ments of 1978 (25 U.S.C. 2007).

1 “(6) SERVICES, FUNCTIONS, AND RESPONSIBIL-
2 ITIES.—A funding agreement shall specify—

3 “(A) the services to be provided under the
4 funding agreement;

5 “(B) the functions to be performed under
6 the funding agreement; and

7 “(C) the responsibilities of the Indian tribe
8 and the Secretary under the funding agreement.

9 “(7) BASE BUDGET.—A funding agreement
10 shall, at the option of the Indian tribe, provide for
11 a stable base budget specifying the recurring funds
12 (including funds available under section 106(a)) to
13 be transferred to the Indian tribe, for such period as
14 the Indian tribe specifies in the funding agreement,
15 subject to annual adjustment only to reflect changes
16 in congressional appropriations.

17 “(8) NO WAIVER OF TRUST RESPONSIBILITY.—
18 A funding agreement shall prohibit the Secretary
19 from waiving, modifying, or diminishing in any way
20 the trust responsibility of the United States with re-
21 spect to Indian tribes and individual Indians that ex-
22 ists under treaties, Executive orders, court decisions,
23 and other laws.

24 “(c) AMENDMENT.—The Secretary shall not revise,
25 amend, or require additional terms in a new or subsequent

1 funding agreement without the consent of the Indian tribe,
2 unless such terms are specifically required by Federal stat-
3 ute to apply to agreements under this title.

4 “(d) EFFECTIVE DATE.—A funding agreement shall
5 become effective on the date specified in the funding
6 agreement.

7 “(e) EXISTING AND SUBSEQUENT FUNDING AGREE-
8 MENTS.—

9 “(1) SUBSEQUENT FUNDING AGREEMENTS.—
10 Absent notification from an Indian tribe that it is
11 withdrawing or retroceding the operation of one or
12 more programs identified in a funding agreement, or
13 unless otherwise agreed to by the parties to the
14 funding agreement—

15 “(A) a funding agreement shall remain in
16 full force and in effect until a subsequent fund-
17 ing agreement is executed; and

18 “(B) the term of the subsequent funding
19 agreement shall be retroactive to the end of the
20 term of the preceding funding agreement for
21 the purposes of calculating the amount of fund-
22 ing to which the Indian tribe is entitled.

23 “(2) DISPUTES.—Disputes over the implemen-
24 tation of paragraph (1)(A) shall be subject to section
25 407(c).

1 “(3) EXISTING FUNDING AGREEMENTS.—An
2 Indian tribe that was participating in self-govern-
3 ance under this title on the date of enactment of the
4 Department of the Interior Tribal Self-Governance
5 Act of 2009 shall have the option at any time after
6 that date—

7 “(A) to retain its existing funding agree-
8 ment (in whole or in part) to the extent that
9 the provisions of that funding agreement are
10 not directly contrary to any express provision of
11 this title; or

12 “(B) to negotiate a new funding agreement
13 in a manner consistent with this title.

14 “(4) MULTIYEAR FUNDING AGREEMENTS.—An
15 Indian tribe may, at the discretion of the Indian
16 tribe, negotiate with the Secretary for a funding
17 agreement with a term that exceeds one year.

18 **“SEC. 406. GENERAL PROVISIONS.**

19 “(a) APPLICABILITY.—An Indian tribe may include
20 in any compact or funding agreement provisions that re-
21 flect the requirements of this title.

22 “(b) CONFLICTS OF INTEREST.—An Indian tribe
23 participating in self-governance shall ensure that internal
24 measures are in place to address, pursuant to tribal law

1 and procedures, conflicts of interest in the administration
2 of programs.

3 “(c) AUDITS.—

4 “(1) SINGLE AGENCY AUDIT ACT.—Chapter 75
5 of title 31, United States Code, shall apply to a
6 funding agreement under this title.

7 “(2) COST PRINCIPLES.—An Indian tribe shall
8 apply cost principles under the applicable Office of
9 Management and Budget circular, except as modi-
10 fied by—

11 “(A) any provision of law, including section
12 106 of this Act; or

13 “(B) any exemptions to applicable Office
14 of Management and Budget circulars subse-
15 quently granted by the Office of Management
16 and Budget.

17 “(3) FEDERAL CLAIMS.—Any claim by the Fed-
18 eral Government against the Indian tribe relating to
19 funds received under a funding agreement based on
20 any audit under this subsection shall be subject to
21 the provisions of section 106(f).

22 “(d) REDESIGN AND CONSOLIDATION.—An Indian
23 tribe may redesign or consolidate programs or reallocate
24 funds for programs in any manner that the Indian tribe
25 deems to be in the best interest of the Indian community

1 being served, so long as the redesign or consolidation does
2 not have the effect of denying eligibility for services to
3 population groups otherwise eligible to be served under ap-
4 plicable Federal law.

5 “(e) RETROCESSION.—

6 “(1) IN GENERAL.—An Indian tribe may fully
7 or partially retrocede to the Secretary any program
8 under a compact or funding agreement.

9 “(2) EFFECTIVE DATE.—

10 “(A) AGREEMENT.—Unless the Indian
11 tribe rescinds the request for retrocession, such
12 retrocession shall become effective on the date
13 specified by the parties in the compact or fund-
14 ing agreement.

15 “(B) NO AGREEMENT.—In the absence of
16 a specification of an effective date in the com-
17 pact or funding agreement, the retrocession
18 shall become effective on—

19 “(i) the earlier of—

20 “(I) one year after the date of
21 submission of such request; or

22 “(II) the date on which the fund-
23 ing agreement expires; or

1 “(ii) such date as may be mutually
2 agreed upon by the Secretary and the In-
3 dian tribe.

4 “(f) NONDUPLICATION.—A funding agreement shall
5 provide that, for the period for which, and to the extent
6 to which, funding is provided to an Indian tribe under this
7 title, the Indian tribe—

8 “(1) shall not be entitled to contract with the
9 Secretary for funds under section 102, except that
10 such Indian tribe shall be eligible for new programs
11 on the same basis as other Indian tribes; and

12 “(2) shall be responsible for the administration
13 of programs in accordance with the compact or
14 funding agreement.

15 “(g) RECORDS.—

16 “(1) IN GENERAL.—Unless an Indian tribe
17 specifies otherwise in the compact or funding agree-
18 ment, records of an Indian tribe shall not be consid-
19 ered Federal records for purposes of chapter 5 of
20 title 5, United States Code.

21 “(2) RECORDKEEPING SYSTEM.—An Indian
22 tribe shall—

23 “(A) maintain a recordkeeping system; and

24 “(B) on 30 days’ notice, provide the Sec-
25 retary with reasonable access to the records to

1 enable the Department to meet the require-
2 ments of sections 3101 through 3106 of title
3 44, United States Code.

4 **“SEC. 407. PROVISIONS RELATED TO THE SECRETARY.**

5 “(a) TRUST EVALUATIONS.—A funding agreement
6 shall include a provision to monitor the performance of
7 trust functions by the Indian tribe through the annual
8 trust evaluation.

9 “(b) REASSUMPTION.—

10 “(1) IN GENERAL.—A compact or funding
11 agreement shall include provisions for the Secretary
12 to reassume a program and associated funding if
13 there is a specific finding relating to that program
14 of—

15 “(A) imminent jeopardy to a physical trust
16 asset, natural resources, or public health and
17 safety that—

18 “(i) is caused by an act or omission of
19 the Indian tribe; and

20 “(ii) arises out of a failure to carry
21 out the compact or funding agreement; or

22 “(B) gross mismanagement with respect to
23 funds transferred to an Indian tribe under a
24 compact or funding agreement, as determined

1 by the Secretary in consultation with the In-
2 spector General, as appropriate.

3 “(2) PROHIBITION.—The Secretary shall not
4 reassume operation of a program in whole or part
5 unless—

6 “(A) the Secretary first provides written
7 notice and a hearing on the record to the In-
8 dian tribe; and

9 “(B) the Indian tribe does not take correc-
10 tive action to remedy mismanagement of the
11 funds or the imminent jeopardy to a physical
12 trust asset, natural resource, or public health
13 and safety.

14 “(3) EXCEPTION.—

15 “(A) IN GENERAL.—Notwithstanding para-
16 graph (2), the Secretary may, on written notice
17 to the Indian tribe, immediately reassume oper-
18 ation of a program if—

19 “(i) the Secretary makes a finding of
20 both imminent and substantial jeopardy
21 and irreparable harm to a physical trust
22 asset, a natural resource, or the public
23 health and safety caused by an act or
24 omission of the Indian tribe; and

1 “(ii) the imminent and substantial
2 jeopardy, and irreparable harm to the
3 physical trust asset, natural resource, or
4 public health and safety arises out of a
5 failure by the Indian tribe to carry out its
6 compact or funding agreement.

7 “(B) REASSUMPTION.—If the Secretary re-
8 assumes operation of a program under subpara-
9 graph (A), the Secretary shall provide the In-
10 dian tribe with a hearing on the record not
11 later than 10 days after the date of reassump-
12 tion.

13 “(c) INABILITY TO AGREE ON COMPACT OR FUNDING
14 AGREEMENT.—

15 “(1) FINAL OFFER.—If the Secretary and a
16 participating Indian tribe are unable to agree, in
17 whole or in part, on the terms of a compact or fund-
18 ing agreement (including funding levels), the Indian
19 tribe may submit a final offer to the Secretary.

20 “(2) DETERMINATION.—Not more than 45
21 days after the date of submission of a final offer, or
22 as otherwise agreed to by the Indian tribe, the Sec-
23 retary shall review and make a determination with
24 respect to the final offer.

1 “(3) NO TIMELY DETERMINATION.—If the Sec-
2 retary fails to make a determination with respect to
3 a final offer within the time specified in paragraph
4 (2), the Secretary shall be deemed to have agreed to
5 the offer.

6 “(4) REJECTION OF FINAL OFFER.—

7 “(A) IN GENERAL.—If the Secretary re-
8 jects a final offer (or one or more provisions or
9 funding levels in a final offer), the Secretary
10 shall—

11 “(i) provide timely written notification
12 to the Indian tribe that contains a specific
13 finding that clearly demonstrates, or that
14 is supported by a controlling legal author-
15 ity, that—

16 “(I) the amount of funds pro-
17 posed in the final offer exceeds the
18 applicable funding level to which the
19 Indian tribe is entitled under this
20 title;

21 “(II) the program that is the
22 subject of the final offer is an inher-
23 ent Federal function;

24 “(III) the Indian tribe cannot
25 carry out the program in a manner

1 that would not result in significant
2 danger or risk to the public health;

3 “(IV) the Indian tribe is not eli-
4 gible to participate in self-governance
5 under section 403(b); or

6 “(V) the funding agreement
7 would violate Federal statute or regu-
8 lation;

9 “(ii) provide technical assistance to
10 overcome the objections stated in the noti-
11 fication required by clause (i);

12 “(iii) provide the Indian tribe with a
13 hearing on the record with the right to en-
14 gage in full discovery relevant to any issue
15 raised in the matter and the opportunity
16 for appeal on the objections raised (except
17 that the Indian tribe may, in lieu of filing
18 such appeal, directly proceed to initiate an
19 action in a Federal district court under
20 section 110(a)); and

21 “(iv) provide the Indian tribe the op-
22 tion of entering into the severable portions
23 of a final proposed compact or funding
24 agreement (including a lesser funding
25 amount, if any), that the Secretary did not

1 reject, subject to any additional alterations
2 necessary to conform the compact or fund-
3 ing agreement to the severed provisions.

4 “(B) EFFECT OF EXERCISING CERTAIN
5 OPTION.—If an Indian tribe exercises the op-
6 tion specified in subparagraph (A)(iv)—

7 “(i) the Indian tribe shall retain the
8 right to appeal the rejection by the Sec-
9 retary under this section; and

10 “(ii) clauses (i), (ii), and (iii) of sub-
11 paragraph (A) shall apply only to the por-
12 tion of the proposed final compact or fund-
13 ing agreement that was rejected by the
14 Secretary.

15 “(d) BURDEN OF PROOF.—In any administrative
16 hearing or appeal or civil action brought under this sec-
17 tion, the Secretary shall have the burden of demonstrating
18 by clear and convincing evidence the validity of the
19 grounds for rejecting a final offer made under subsection
20 (c) or the grounds for a reassumption under subsection
21 (b).

22 “(e) GOOD FAITH.—

23 “(1) IN GENERAL.—In the negotiation of com-
24 pacts and funding agreements, the Secretary shall at

1 all times negotiate in good faith to maximize imple-
2 mentation of the self-governance policy.

3 “(2) POLICY.—The Secretary shall carry out
4 this title in a manner that maximizes the policy of
5 tribal self-governance.

6 “(f) SAVINGS.—To the extent that programs carried
7 out by Indian tribes and tribal organizations under this
8 title reduce the administrative or other responsibilities of
9 the Secretary with respect to the operation of Indian pro-
10 grams and result in savings that have not otherwise been
11 included in the amount of tribal shares and other funds
12 determined under section 409(c), the Secretary shall make
13 such savings available to the Indian tribes or tribal organi-
14 zations for the provision of additional services to program
15 beneficiaries in a manner equitable to directly served, con-
16 tracted, and compacted programs.

17 “(g) TRUST RESPONSIBILITY.—The Secretary may
18 not waive, modify, or diminish in any way the trust re-
19 sponsibility of the United States with respect to Indian
20 tribes and individual Indians that exists under treaties,
21 Executive orders, other laws, or court decisions.

22 “(h) DECISIONMAKER.—A decision that constitutes
23 final agency action and relates to an appeal within the
24 Department conducted under subsection (c)(4) may be
25 made—

1 “(1) by an official of the Department who holds
2 a position at a higher organizational level within the
3 Department than the level of the departmental agency
4 in which the decision that is the subject of the
5 appeal was made; or

6 “(2) by an administrative law judge.

7 “(i) RULES OF CONSTRUCTION.—Each provision of
8 this title and each provision of a compact or funding
9 agreement shall be liberally construed for the benefit of
10 the Indian tribe participating in self-governance, and any
11 ambiguity shall be resolved in favor of the Indian tribe.

12 **“SEC. 408. CONSTRUCTION PROGRAMS AND PROJECTS.**

13 “(a) IN GENERAL.—Indian tribes participating in
14 tribal self-governance may carry out construction projects
15 under this title.

16 “(b) TRIBAL OPTION TO CARRY OUT CERTAIN FEDERAL
17 ENVIRONMENTAL ACTIVITIES.—In carrying out a
18 construction project under this title, an Indian tribe may,
19 in its discretion, elect to assume some or all Federal responsibilities
20 under the National Environmental Policy
21 Act of 1969 (42 U.S.C. 4321 et seq.), the National Historic
22 Preservation Act (16 U.S.C. 470 et seq.), and related
23 provisions of law that would apply if the Secretary were
24 to undertake a construction project, by adopting a resolution—
25 tion—

1 “(1) designating a certifying tribal officer to
2 represent the Indian tribe and to assume the status
3 of a responsible Federal official under such laws;
4 and

5 “(2) accepting the jurisdiction of the Federal
6 courts for the purpose of enforcing the responsibil-
7 ities of the certifying tribal officer assuming the sta-
8 tus of a responsible Federal official under such laws.

9 “(c) CODES AND STANDARDS.—In carrying out a
10 construction project under this title, an Indian tribe
11 shall—

12 “(1) adhere to appropriate building codes and
13 architectural and engineering standards (including
14 health and safety) in conformity with nationally rec-
15 ognized standards for comparable projects; and

16 “(2) use only architects and engineers who are
17 State licensed and bonded and who certify that—

18 “(A) they are qualified to perform the
19 work required by the specific construction in-
20 volved; and

21 “(B) the plans and specifications meet or
22 exceed the applicable health and safety codes
23 and standards.

24 “(d) TRIBAL ACCOUNTABILITY.—

1 “(1) In carrying out a construction project
2 under this title, an Indian tribe shall assume respon-
3 sibility for the successful completion of the construc-
4 tion project.

5 “(2) For each construction project carried out
6 by an Indian tribe under this title, the Indian tribe
7 and the Secretary shall negotiate a provision to be
8 included in the funding agreement that identifies—

9 “(A) the approximate start and completion
10 dates for the project, which may extend over a
11 period of one or more years;

12 “(B) a general description of the project;

13 “(C) the responsibilities of the Indian tribe
14 and the Secretary for the project;

15 “(D) how project-related environmental
16 considerations will be addressed;

17 “(E) the amount of funds provided for the
18 project; and

19 “(F) the obligations of the Indian tribe to
20 comply with applicable Federal laws, statutes,
21 and regulations.

22 “(e) FUNDING.—Funding appropriated for construc-
23 tion projects carried out under this title shall be included
24 in funding agreements as annual or semiannual advance
25 payments at the option of the Indian tribe. The Secretary

1 shall include all associated project contingency funds with
2 each advance payment. The Indian tribe shall be respon-
3 sible for the management of such contingency funds.

4 “(f) NEGOTIATIONS.—At the option of the Indian
5 tribe, construction project funding proposals shall be nego-
6 tiated pursuant to the statutory process in section 450j(m)
7 of title 25 and any resulting construction project agree-
8 ment shall be incorporated into the funding agreement as
9 addenda.

10 “(g) FEDERAL REVIEW AND APPROVAL.—The Sec-
11 retary shall have at least one opportunity to review and
12 approve project planning and design documents prepared
13 by the Indian tribe in advance of initial construction, and,
14 before they are implemented, at least one opportunity to
15 review and approve subsequent document amendments
16 which result in a significant change in construction. The
17 Indian tribe shall provide the Secretary with project
18 progress and financial reports not less than semiannually.
19 The Secretary may conduct onsite project oversight visits
20 semiannually or on an alternate schedule agreed to by the
21 Secretary and the Indian tribe.

22 “(h) APPLICATION OF OTHER LAWS.—Unless other-
23 wise agreed to by the Indian tribe, no provision of the Of-
24 fice of Federal Procurement Policy Act (41 U.S.C. 401
25 et seq.), the Federal Acquisition Regulations issued pursu-

1 ant thereto, or any other law or regulation pertaining to
2 Federal procurement (including Executive orders) shall
3 apply to any construction program or project carried out
4 under this title.

5 **“SEC. 409. PAYMENT.**

6 “(a) IN GENERAL.—At the request of the governing
7 body of the Indian tribe and under the terms of an agree-
8 ment, the Secretary shall provide funding to the Indian
9 tribe to carry out the funding agreement.

10 “(b) ADVANCE ANNUAL PAYMENT.—At the option of
11 the Indian tribe, a funding agreement shall provide for
12 an advance annual payment to an Indian tribe.

13 “(c) AMOUNT.—Subject to subsection (e) and sec-
14 tions 405 and 406 of this title, the Secretary shall provide
15 funds to the Indian tribe under a funding agreement for
16 programs in an amount that is equal to the amount that
17 the Indian tribe would have been entitled to receive under
18 contracts and grants under this Act (including amounts
19 for direct program and contract support costs and, in ad-
20 dition, any funds that are specifically or functionally re-
21 lated to the provision by the Secretary of services and ben-
22 efits to the Indian tribe or its members) without regard
23 to the organization level within the Department in which
24 the programs are carried out.

1 “(d) TIMING.—Pursuant to the terms of any compact
2 or funding agreement entered into under this part, the
3 Secretary shall transfer to the Indian tribe all funds pro-
4 vided for in the funding agreement, pursuant to subsection
5 (c), and provide funding for periods covered by joint reso-
6 lution adopted by Congress making continuing appropri-
7 ations, to the extent permitted by such resolution. Within
8 12 months from the date of enactment of this bill, in any
9 instance where a funding agreement requires an annual
10 transfer of funding to be made at the beginning of a fiscal
11 year, or requires semiannual or other periodic transfers
12 of funding to be made commencing at the beginning of
13 a fiscal year, the first such transfer shall be made not later
14 than 10 days after the apportionment of such funds by
15 the Office of Management and Budget to the Department,
16 unless the funding agreement provides otherwise.

17 “(e) AVAILABILITY.—Funds for trust services to indi-
18 vidual Indians shall be available under a funding agree-
19 ment only to the extent that the same services that would
20 have been provided by the Secretary are provided to indi-
21 vidual Indians by the Indian tribe.

22 “(f) MULTIYEAR FUNDING.—A funding agreement
23 may provide for multiyear funding.

24 “(g) LIMITATIONS ON AUTHORITY OF THE SEC-
25 RETARY.—The Secretary shall not—

1 “(1) fail to transfer to an Indian tribe its full
2 share of any central, headquarters, regional, area, or
3 service unit office or other funds due under this
4 title, except as required by Federal law;

5 “(2) withhold any portion of such funds for
6 transfer over a period of years; or

7 “(3) reduce the amount of funds required under
8 this title—

9 “(A) to make funding available for self-
10 governance monitoring or administration by the
11 Secretary;

12 “(B) in subsequent years, except as nec-
13 essary as a result of—

14 “(i) a reduction in appropriations
15 from the previous fiscal year for the pro-
16 gram to be included in a compact or fund-
17 ing agreement;

18 “(ii) a congressional directive in legis-
19 lation or an accompanying report;

20 “(iii) a tribal authorization;

21 “(iv) a change in the amount of pass-
22 through funds subject to the terms of the
23 funding agreement; or

1 “(v) completion of an activity under a
2 program for which the funds were pro-
3 vided;

4 “(C) to pay for Federal functions, includ-
5 ing—

6 “(i) Federal pay costs;

7 “(ii) Federal employee retirement ben-
8 efits;

9 “(iii) automated data processing;

10 “(iv) technical assistance; and

11 “(v) monitoring of activities under
12 this title; or

13 “(D) to pay for costs of Federal personnel
14 displaced by self-determination contracts under
15 this Act or self-governance under this title.

16 “(h) FEDERAL RESOURCES.—If an Indian tribe
17 elects to carry out a compact or funding agreement with
18 the use of Federal personnel, Federal supplies (including
19 supplies available from Federal warehouse facilities), Fed-
20 eral supply sources (including lodging, airline transpor-
21 tation, and other means of transportation including the
22 use of interagency motor pool vehicles), or other Federal
23 resources (including supplies, services, and resources
24 available to the Secretary under any procurement con-
25 tracts in which the Department is eligible to participate),

1 the Secretary shall acquire and transfer such personnel,
2 supplies, or resources to the Indian tribe under this title.

3 “(i) PROMPT PAYMENT ACT.—Chapter 39 of title 31,
4 United States Code, shall apply to the transfer of funds
5 due under a compact or funding agreement authorized
6 under this title.

7 “(j) INTEREST OR OTHER INCOME.—

8 “(1) IN GENERAL.—An Indian tribe may retain
9 interest or income earned on any funds paid under
10 a compact or funding agreement to carry out gov-
11 ernmental purposes.

12 “(2) NO EFFECT ON OTHER AMOUNTS.—The
13 retention of interest or income under paragraph (1)
14 shall not diminish the amount of funds an Indian
15 tribe is entitled to receive under a funding agree-
16 ment in the year the interest or income is earned or
17 in any subsequent fiscal year.

18 “(3) INVESTMENT STANDARD.—Funds trans-
19 ferred under this title shall be managed using the
20 prudent investment standard.

21 “(k) CARRYOVER OF FUNDS.—

22 “(1) IN GENERAL.—Notwithstanding any provi-
23 sion of an Act of appropriation, all funds paid to an
24 Indian tribe in accordance with a compact or fund-
25 ing agreement shall remain available until expended.

1 “(2) EFFECT OF CARRYOVER.—If an Indian
2 tribe elects to carry over funding from 1 year to the
3 next, the carryover shall not diminish the amount of
4 funds the Indian tribe is entitled to receive under a
5 funding agreement in that fiscal year or any subse-
6 quent fiscal year.

7 “(1) LIMITATION OF COSTS.—

8 “(1) IN GENERAL.—An Indian tribe shall not
9 be obligated to continue performance that requires
10 an expenditure of funds in excess of the amount of
11 funds transferred under a compact or funding agree-
12 ment.

13 “(2) NOTICE OF INSUFFICIENCY.—If at any
14 time the Indian tribe has reason to believe that the
15 total amount provided for a specific activity under a
16 compact or funding agreement is insufficient, the In-
17 dian tribe shall provide reasonable notice of such in-
18 sufficiency to the Secretary.

19 “(3) SUSPENSION OF PERFORMANCE.—If, after
20 notice under paragraph (2), the Secretary does not
21 increase the amount of funds transferred under the
22 funding agreement, the Indian tribe may suspend
23 performance of the activity until such time as addi-
24 tional funds are transferred.

1 “(m) DISTRIBUTION OF FUNDS.—The Office of Self-
 2 Governance shall be responsible for distribution of all Bu-
 3 reau of Indian Affairs funds provided under this title un-
 4 less otherwise agreed by the parties.

5 **“SEC. 410. FACILITATION.**

6 “(a) IN GENERAL.—Except as otherwise provided by
 7 law, the Secretary shall interpret each Federal law and
 8 regulation in a manner that facilitates—

9 “(1) the inclusion of programs in funding
 10 agreements; and

11 “(2) the implementation of funding agreements.

12 “(b) REGULATION WAIVER.—

13 “(1) REQUEST.—An Indian tribe may submit a
 14 written request for a waiver to the Secretary identi-
 15 fying the specific text in regulation sought to be
 16 waived and the basis for the request.

17 “(2) DETERMINATION BY THE SECRETARY.—
 18 Not later than 120 days after receipt by the Sec-
 19 retary of a request under paragraph (1), the Sec-
 20 retary shall approve or deny the requested waiver in
 21 writing to the Indian tribe.

22 “(3) GROUND FOR DENIAL.—The Secretary
 23 may deny a request under paragraph (1) only upon
 24 a specific finding by the Secretary that the identified

1 text in the regulation may not be waived because
2 such a waiver is prohibited by Federal law.

3 “(4) FAILURE TO MAKE DETERMINATION.—If
4 the Secretary fails to approve or deny a waiver re-
5 quest within the time required under paragraph (2),
6 the Secretary shall be deemed to have approved the
7 request.

8 “(5) FINALITY.—The Secretary’s decision shall
9 be final for the Department.

10 **“SEC. 411. DISCLAIMERS.**

11 “Nothing in this title expands or alters any statutory
12 authority of the Secretary so as to authorize the Secretary
13 to enter into any agreement under section 405(b)(2) or
14 405(b)(3)—

15 “(1) with respect to an inherent Federal func-
16 tion;

17 “(2) in a case in which the law establishing a
18 program explicitly prohibits the type of participation
19 sought by the Indian tribe (without regard to wheth-
20 er one or more Indian tribes are identified in the au-
21 thorizing law); or

22 “(3) limits or reduces in any way the services,
23 contracts, or funds that any other Indian tribe or
24 tribal organization is eligible to receive under section
25 102 or any other applicable Federal law.

1 **“SEC. 412. DISCRETIONARY APPLICATION OF OTHER SEC-**
2 **TIONS.**

3 “(a) IN GENERAL.—At the option of a participating
4 Indian tribe or Indian tribes, any or all of the provisions
5 of title I shall be incorporated in any Department compact
6 or funding agreement.

7 “(b) EFFECT.—Each incorporated provision—

8 “(1) shall have the same force and effect as if
9 set out in full in this title; and

10 “(2) shall be deemed to supplement or replace
11 any related provision in this title and to apply to any
12 agency otherwise governed by this title.

13 “(c) EFFECTIVE DATE.—If an Indian tribe requests
14 incorporation at the negotiation stage of a compact or
15 funding agreement, the incorporation—

16 “(1) shall be deemed effective immediately; and

17 “(2) shall control the negotiation and resulting
18 compact and funding agreement.

19 **“SEC. 413. FUNDING NEEDS.**

20 “(a) REQUIREMENT OF ANNUAL BUDGET RE-
21 QUEST.—

22 “(1) IN GENERAL.—The President shall iden-
23 tify in the annual budget request submitted to Con-
24 gress under section 1105 of title 31, United States
25 Code, all funds necessary to fully fund all funding
26 agreements authorized under this Act.

1 “(2) DUTY OF SECRETARY.—The Secretary
2 shall identify in each budget request the amount of
3 funds that are sufficient for planning and negotia-
4 tion grants and sufficient to cover any shortfall in
5 funding identified under subsection (b).

6 “(3) RULE OF CONSTRUCTION.—Nothing in
7 this subsection authorizes the Secretary to reduce
8 the amount of funds that an Indian tribe is other-
9 wise entitled to receive under a funding agreement
10 or other applicable law.

11 “(b) PRESENT FUNDING; SHORTFALLS.—In each re-
12 port identified in subsection (a), the Secretary shall iden-
13 tify the level of need presently funded and any shortfall
14 in funding (including direct program costs, tribal shares,
15 and contract support costs) for each Indian tribe, either
16 directly by the Secretary, under self-determination con-
17 tracts, or under compacts and funding agreements. The
18 first report identified in subsection (a) shall be limited to
19 the area office and shall be due on January 1, 2011. The
20 next report due on January 1, 2012, shall include all fund-
21 ing at the area and regional offices. The next report due
22 on January 1, 2013, and all subsequent reports, shall in-
23 clude all funding at the area, regional, and central offices.

24 **“SEC. 414. REPORTS.**

25 “(a) IN GENERAL.—

1 “(1) REQUIREMENT.—On January 1 of each
2 year, the Secretary shall submit to Congress a re-
3 port regarding the administration of this title.

4 “(2) ANALYSIS.—A report under paragraph (1)
5 shall include a detailed analysis of tribal unmet need
6 for each Indian tribe, either directly by the Sec-
7 retary, under self-determination contracts under title
8 I, or under compacts and funding agreements au-
9 thorized under this title.

10 “(3) NO ADDITIONAL REPORTING REQUIRE-
11 MENTS.—In preparing reports under paragraph (1),
12 the Secretary may not impose any reporting require-
13 ments on participating Indian tribes not otherwise
14 provided by this title.

15 “(b) CONTENTS.—The report under subsection (a)(1)
16 shall—

17 “(1) be compiled from information contained in
18 funding agreements, annual audit reports, and data
19 of the Secretary regarding the disposition of Federal
20 funds;

21 “(2) identify—

22 “(A) the relative costs and benefits of self-
23 governance;

24 “(B) with particularity, all funds that are
25 specifically or functionally related to the provi-

1 sion by the Secretary of services and benefits to
2 self-governance Indian tribes and members of
3 Indian tribes;

4 “(C) the funds transferred to each Indian
5 tribe and the corresponding reduction in the
6 Federal employees and workload;

7 “(D) the funding formula for individual
8 tribal shares of all Central Office funds, to-
9 gether with the comments of affected Indian
10 tribes, developed under subsection (d); and

11 “(E) amounts expended in the preceding
12 fiscal year to carry out inherent Federal func-
13 tions, including an identification of inherent
14 Federal functions by type and location;

15 “(3) contain a description of the methods used
16 to determine the individual tribal share of funds con-
17 trolled by all components of the Department (includ-
18 ing funds assessed by any other Federal agency) for
19 inclusion in compacts or funding agreements;

20 “(4) before being submitted to Congress, be dis-
21 tributed to the Indian tribes for comment (with a
22 comment period of no less than 30 days); and

23 “(5) include the separate views and comments
24 of each Indian tribe or tribal organization.

25 “(c) REPORT ON NON-BIA, NON-OST PROGRAMS.—

1 “(1) IN GENERAL.—In order to optimize oppor-
2 tunities for including non-Bureau of Indian Affairs
3 and non-Office of Special Trustee programs in
4 agreements with Indian tribes participating in self-
5 governance under this title, the Secretary shall—

6 “(A) review all programs administered by
7 the Department, other than through the Bu-
8 reau of Indian Affairs or Office of Special
9 Trustee, without regard to the agency or office
10 concerned; and

11 “(B) not later than January 1 of each
12 year, submit to Congress—

13 “(i) a list of all such programs that
14 the Secretary determines, with the concur-
15 rence of Indian tribes participating in self-
16 governance under this title, are eligible to
17 be included in a funding agreement at the
18 request of a participating Indian tribe; and

19 “(ii) a list of all such programs for
20 which Indian tribes have requested to in-
21 clude in a funding agreement under section
22 405(b)(3) due to the special geographic,
23 historical, or cultural significance of the
24 program to the Indian tribe, indicating
25 whether each request was granted or de-

1 nied, and stating the grounds for any de-
2 nial.

3 “(2) PROGRAMMATIC TARGETS.—The Secretary
4 shall establish programmatic targets, after consulta-
5 tion with Indian tribes participating in self-govern-
6 ance, to encourage bureaus of the Department to en-
7 sure that a significant portion of those programs are
8 included in funding agreements.

9 “(3) PUBLICATION.—The lists and targets
10 under paragraphs (1) and (2) shall be published in
11 the Federal Register and made available to any In-
12 dian tribe participating in self-governance.

13 “(4) ANNUAL REVIEW.—

14 “(A) IN GENERAL.—The Secretary shall
15 annually review and publish in the Federal Reg-
16 ister, after consultation with Indian tribes par-
17 ticipating in self-governance, revised lists and
18 programmatic targets.

19 “(B) CONTENTS.—The revised lists and
20 programmatic targets shall include all programs
21 that were eligible for contracting in the original
22 list published in the Federal Register in 1995,
23 except for programs specifically determined not
24 to be contractible as a matter of law.

1 “(d) REPORT ON CENTRAL OFFICE FUNDS.—Not
 2 later than January 1, 2011, the Secretary shall, in con-
 3 sultation with Indian tribes, develop a funding formula to
 4 determine the individual tribal share of funds controlled
 5 by the Central Office of the Bureau of Indian Affairs and
 6 the Office of the Special Trustee for inclusion in the com-
 7 pacts.

8 **“SEC. 415. REGULATIONS.**

9 “(a) IN GENERAL.—

10 “(1) PROMULGATION.—Not later than 90 days
 11 after the date of the enactment of the Department
 12 of the Interior Tribal Self-Governance Act of 2009,
 13 the Secretary shall initiate procedures under sub-
 14 chapter III of chapter 5 of title 5, United States
 15 Code, to negotiate and promulgate such regulations
 16 as are necessary to carry out the amendments made
 17 by this title.

18 “(2) PUBLICATION OF PROPOSED REGULA-
 19 TIONS.—Proposed regulations to implement the
 20 amendments shall be published in the Federal Reg-
 21 ister not later than 18 months after the date of the
 22 enactment of this title.

23 “(3) EXPIRATION OF AUTHORITY.—The author-
 24 ity to promulgate regulations under paragraph (1)

1 shall expire on the date that is 24 months after the
2 date of the enactment of this title.

3 “(b) COMMITTEE.—

4 “(1) MEMBERSHIP.—A negotiated rulemaking
5 committee established pursuant to section 565 of
6 title 5, United States Code, to carry out this section
7 shall have as its members only Federal and tribal
8 government representatives.

9 “(2) LEAD AGENCY.—Among the Federal rep-
10 resentatives, the Office of Self-Governance shall be
11 the lead agency for the Department.

12 “(c) ADAPTATION OF PROCEDURES.—The Secretary
13 shall adapt the negotiated rulemaking procedures to the
14 unique context of self-governance and the government-to-
15 government relationship between the United States and
16 Indian tribes.

17 “(d) EFFECT.—

18 “(1) REPEAL.—All regulatory provisions under
19 part 1000 of title 25, Code of Federal Regulations,
20 inconsistent with this title are repealed on the date
21 of the enactment of the Department of the Interior
22 Tribal Self-Governance Act of 2009.

23 “(2) EFFECTIVENESS WITHOUT REGARD TO
24 REGULATIONS.—The lack of promulgated regula-
25 tions shall not limit the effect of this title.

1 **“SEC. 416. EFFECT OF CIRCULARS, POLICIES, MANUALS,**
2 **GUIDANCES, AND RULES.**

3 “Unless expressly agreed to by a participating Indian
4 tribe in the compact or funding agreement, the partici-
5 pating Indian tribe shall not be subject to any agency cir-
6 cular, policy, manual, guidance, or rule adopted by the De-
7 partment, except for—

8 “(1) the eligibility provisions of section 105(g);
9 and

10 “(2) regulations promulgated under section
11 415.

12 **“SEC. 417. APPEALS.**

13 “In any administrative appeal or civil action for judi-
14 cial review of any decision made by the Secretary under
15 this title, the Secretary shall have the burden of proof of
16 demonstrating by clear and convincing evidence—

17 “(1) the validity of the grounds for the decision;
18 and

19 “(2) the consistency of the decision with the
20 provisions and policies of this title.

21 **“SEC. 418. AUTHORIZATION OF APPROPRIATIONS.**

22 “There are authorized to be appropriated such sums
23 as may be necessary to carry out this title.”.

